



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

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Secretary of Natural Resources

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Robert G. Burnley
Director

Gerard Seeley, Jr.
Piedmont Regional Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION SPECIAL ORDER BY CONSENT ISSUED TO Q-MARKETS, INC.

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code §§ 62.1-44.15(8a) and (8d), between the State Water Control Board and Q-Markets, Inc. for the purpose of resolving certain violations of environmental law and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
2. "VA Code" means the Code of Virginia (1950), as amended.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
6. "Order" means this document, also known as a Consent Special Order.

7. "Q-Markets" means Q-Markets, Inc., an entity that is incorporated in the State of Virginia, who is the registered owner of the USTs at the facility located at 8701 Staples Mill Road, Richmond, Virginia.
8. "Property" means the property owned by Q-Markets located at 8701 Staples Mill Road, Richmond, Virginia.
9. "ECC" means Environmental Consultants & Contractors, Inc.
10. "UST" means underground storage tank.
11. "SCR" means Site Characterization Report.

SECTION C: Findings of Fact and Conclusions of Law

1. Mr. Duncan Thomas, President and Director of Q-Markets Inc., registered Q-Markets with DEQ in 1997 as the owner of the USTs at the property located at 8701 Staples Mill Road (Property), Richmond, Virginia; and is an UST owner and/or operator within the meaning of VA Code § 62.1-44.34:8.
2. In May 2001 DEQ was notified by B & C Services, Inc. that a release of petroleum or other substances regulated under 9 VAC 25-580-10, *et seq.* had occurred at the Property. The detection of petroleum contamination in the soil and ground water at the site occurred during a property transaction investigation and was reported to DEQ.
3. In June 2001 DEQ requested that Q-Markets submit an Initial Abatement Measures Report (IA) and to follow it with a Site Characterization Report (SCR). In October 2001, Q-Markets submitted information gathered during the property transfer investigation, not the IA or SCR as requested. UST Regulation 9 VAC 25-580-250 requires that all UST owners and operators must perform certain initial abatement measures upon a confirmed release of petroleum from an UST system. In addition, UST Regulation 9 VAC 25-580-260 requires that owners and operators must assemble information about the site and the nature of the release into a SCR.
4. In October 2003, DEQ staff requested that Q-Markets submit a complete SCR in January 2004.
5. In March 2004, DEQ sent Q-Markets a Warning Letter (WL) for the alleged failure to submit a SCR. Q-Markets submitted leak detection information gathered in response to the WL.
6. In June 2004, DEQ sent Q-Markets a letter stating that the leak detection records provided by Q-Markets was insufficient and requested the submittal of a SCR due in August 2004.

7. On February 24, 2005, DEQ sent Q-Markets a Notice of Violation (NOV) for the alleged failure to submit an Initial Abatement Measures Report and a Site Characterization Report for the Property.
8. On March 15, 2005, ECC, the consultants for Q-Markets, responded to the NOV.
9. On March 22, 2005, DEQ and ECC held a conference call to discuss resolution of the alleged violations at the Q-Markets site.
10. On May 31, 2005, DEQ signed and faxed an Activity Authorization Form to ECC. On July 21, 2005, DEQ again faxed the form to ECC staff just before site work was to begin.
11. DEQ and ECC have been in contact by phone, fax and correspondence throughout the months of March, April, May, June, July and August of 2005 to resolve this matter.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Va. Code § 62.1-44.15(8a) and (8d), orders Q-Markets, and Q-Markets agrees, to perform the actions described in Appendix A of this Order. In addition, the Board orders Q-Markets, and Q-Markets voluntarily agrees, to pay a civil charge of \$3,500 within 30 days of the effective date of the Order in settlement of the violations cited in this Order. The payment shall note that it is being made pursuant to this order and shall note the Federal Identification Number for Q-Markets. Payment shall be by check, certified check, money order, or cashiers check payable to "Treasurer of Virginia" and sent to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Q-Markets, for good cause shown by Q-Markets, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the NOV issued on February 24, 2005 as listed above in Section C. This Order shall not preclude the Board or the Director from taking any action authorized by law, including, but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the property as may be authorized by law; and/or (3) taking subsequent action to

enforce the terms of this Order. Nothing herein shall affect appropriate enforcement actions by other federal, state, or local regulatory authority, whether or not arising out of the same or similar facts.


3. For purposes of this Order and subsequent actions with respect to this Order, Q-Markets admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Q-Markets consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Q-Markets declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by Q-Markets to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Q-Markets shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Q-Markets shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Q-Markets shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and

- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.


Failure to so notify the Regional Director within 24 hours of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Q-Markets. Notwithstanding the foregoing, Q-Markets agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Q-Markets. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Q-Markets from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
12. By the signature below, Q-Markets voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of September 29, 2005.


Robert G. Burnley, Director
Department of Environmental Quality

Q-Markets voluntarily agrees to the issuance of this Order.

By: 
Date: 8/17/05

Commonwealth of Virginia

City/County of HENRICO

The foregoing document was signed and acknowledged before me this 17th day of

Aug., 2005, by DUNCAN THOMAS, who is
(name)

PRESIDENT of Q-Markets, on behalf of the Corporation.
(title)

Rebecca Blued
Notary Public

My commission expires: Nov. 30th, 2007

APPENDIX A

Q-Markets shall:

1. **By October 15, 2005, submit to DEQ-PRO a complete Site Characterization Report of Q-Markets' property located at 8701 Staples Mill Road, Richmond, Virginia.**
2. **Submit the complete Site Characterization Report to:**

**Cynthia Akers
Department of Environmental Quality
Piedmont Regional Office
4949-A Cox Road
Glen Allen, Virginia 23060**